

SUMMARY REGULATORY IMPACT STATEMENT

This proposed rulemaking will revise 6 NYCRR Part 326 by amending paragraphs 326.2(c)(15) and 326.2(c)(16). In addition, paragraph 326.2(c)(17) will be added to prohibit the sale, possession, and use of pesticide products containing chlorpyrifos.

1. LEGISLATIVE OBJECTIVES

The New York State Assembly and Senate passed legislation in 2019 amending Section 33-1301 of the New York Environmental Conservation Law to completely prohibit the use of chlorpyrifos by December 1, 2021. This legislation was intended to add a new subdivision to phase out use of chlorpyrifos over two years. However, the Governor vetoed the bill and directed the New York State Department of Environmental Conservation (DEC), the State agency responsible for pesticide registration and enforcement, to adopt regulations to prohibit the use of pesticide products containing chlorpyrifos based upon data available on chlorpyrifos exposures. To accomplish this directive the DEC is proposing a regulation that will prohibit the sale, possession, and use of pesticide products containing chlorpyrifos to protect environmental resources, pollinators, pesticide applicators, agricultural workers, and the public.

2. NEEDS AND BENEFITS

To protect the environment, natural resources, and people from the potential impacts from pesticide products with the active ingredient chlorpyrifos the DEC will amend paragraphs and add a new paragraph to section 326.2 of 6 NYCRR Part 326 to prohibit the distribution, sale, purchase, possession, or use of pesticide products containing the active ingredient chlorpyrifos.

3. COSTS

Costs to Industry:

This proposed rulemaking designates pesticide products containing chlorpyrifos as prohibited pesticides. Since businesses will not be able to use chlorpyrifos and pesticide applicators may need to use alternative pesticides and/or additional pest management practices that may be more expensive or less cost effective. Fiscal information received from the agricultural industry and educational institutions indicate that alternatives to chlorpyrifos for agricultural pest control purposes can cost substantially more per acre to control certain pests. For example, at the lower label rates, some alternatives to chlorpyrifos may cost up to ten times more per acre and at the higher label rates the alternative may cost almost two to three times more per acre.

For some agricultural pests there are few or no available alternatives to chlorpyrifos. In these cases, costs may increase at least temporarily until alternative products are available or integrated pest management techniques are developed. Although the costs may be more per acre to apply alternative pesticides, it is common practice for applicators to rotate pesticide active ingredients and pest management methods in order to minimize the possibility of pests developing resistance to one type of pesticide product or active ingredient. Therefore, in general, switching from one

product to another is a normal business practice which may already be accounted for by growers and applicators who use chlorpyrifos.

There are also some costs to registrants and distributors of chlorpyrifos products who may have to recall or arrange for reverse distribution of their products from customers. Without reverse distribution, customers who already have the products will have to dispose of them. There is also the possibility of at least a temporary disruption of business as well as costs to develop redistribution networks to ensure the product is not sold into the state.

Costs to DEC and the State:

The regulatory costs of this prohibition lie with DEC for implementation and administration of the regulatory program. Initially it is anticipated that this prohibition may increase costs through staff time associated with compliance assistance efforts. It is anticipated that this will decrease as existing stocks of chlorpyrifos decrease.

Pesticide costs for invasive species and public health pest control by state agencies may increase for the same reasons as the costs to industry associated with the use of alternative products and methods. Alternatives may be more expensive than the chlorpyrifos products, but it is anticipated that the cost impacts will generally be minimal as pesticides are generally used in rotation with other pesticides and pest management methods.

Costs to Local Governments:

Local governments may need to use alternative pesticides, if they are unable to use chlorpyrifos. If this occurs, alternatives may be more expensive than the chlorpyrifos products, but it is anticipated that the cost impacts will generally be minimal as pesticides are generally used in rotation with other pesticides and pest management methods.

4. LOCAL GOVERNMENT MANDATES

This proposal does not directly mandate the expenditure of funds by local government agencies.

5. PAPERWORK

This proposal does not require any paperwork.

6. DUPLICATION

The proposed regulations will not duplicate any other federal or state regulations or statutes. The proposal is a prohibition related to the sale, possession, and use of chlorpyrifos in New York.

7. ALTERNATIVE APPROACHES

The no action alternative would continue to allow the sale, possession, and use of pesticide products containing chlorpyrifos that may have impacts on the environment, natural resources, and people. This alternative was rejected since it did not provide enough protection for the environment, natural resources, and people of the State.

Limiting the use of pesticide products containing chlorpyrifos for only critical pest management needs where no other pest management alternatives are available may still have impacts on the environment, natural resources, and people. Therefore, this alternative was rejected.

8. FEDERAL STANDARDS

Under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), specifically 7 U.S.C. 136v, a State may regulate the sale or use of any federally registered pesticide in the State but only if and to the extent the regulation does not permit any sale or use prohibited by FIFRA. Currently, chlorpyrifos is registered with EPA, allowing it to be sold and used in New York and other states. This proposal would exceed the federal minimum standards in that the sale and use of chlorpyrifos would be prohibited in New York.

9. COMPLIANCE SCHEDULE

Compliance with this proposed rulemaking will be required upon the effective date of the final rule.

10. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.